

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): FOWLER, Malcolm R., *et al.*
Serial No.: 09/935,884
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Examiner: DURAN, Arthur D.
Group Art Unit: 3622
Confirmation No.: 2053
Title: MARKETING SYSTEMS AND METHODS

VIA FACSIMILE

Attention: Darlene Brown, Patent Appeal Center Specialist

Mail Stop Appeal Brief - Patents

Commissioner for Patents
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**RESPONSE TO
NOTIFICATION OF NON-COMPLIANT AMENDMENT**

This paper is filed in response to the Notification of Non-Compliant Appeal Brief (37 CFR 41.37) mailed herein 29 February 2008.

A substitute concise statement of each ground of rejection presented for review is provided at pages 2 and 3, in the form of a replacement Section 6 of the Appeal Brief.

Remarks are provided beginning at page 4.

6. Grounds of Rejection to be Reviewed on Appeal

The issues in this Appeal are:

- (A) whether the Examiner has established that claims 1, 2, 4, 6-12, 17-25, 27-32, 39-43, 46-53, 55-62, 68, 69, 71-73, and 75-85 are unpatentable, pursuant to 35 U.S.C. § 103(a), over Postrel (published US patent application 20040098317) in view of Fitzpatrick (published US patent application 20020046138), as noted at paragraph 3, page 2, of the Detailed Action mailed herein 20 July 2007;
- (B) whether the Examiner has established that claims 5, 54, 66, 70, and 74 are unpatentable, pursuant to 35 U.S.C. § 103(a), over Postrel (published US patent application 20040098317) in view of Fitzpatrick (published US patent application 20020046138) in view of Eggleston (US patent 6,061,660), as noted at paragraph 4, page 16, of the Detailed Action mailed herein 20 July 2007;
- (C) whether the Examiner has established that claims 13-15, 33, 34, 36-38, and 63-65 are unpatentable, pursuant to 35 U.S.C. § 103(a), over Postrel (published US patent application 20040098317) in view of Fitzpatrick (published US patent application 20020046138) in view of Bednarek (published US patent application 20050251440), as noted at paragraph 5, page 17, of the Detailed Action mailed herein 20 July 2007; and
- (D) whether the Examiner is engaged in piecemeal examination of the Application, contrary to 35 USC 132, 37 CFR 1.104, and MPEP 707.07(f) and (g).

Applicant notes that several of the rejected claims, including claims 31, 51, and 59-67, were cancelled prior to mailing of the 20 July 2007 Office Action. However, as noted below and in the Appeal Brief filed herein 19 February 2008, those claims continue to be rejected by the Examiner; and Applicant seeks review of such rejection.

REMARKS

In accordance with the requirements of the Notification of Non-Compliant Appeal Brief, Applicant respectfully provides herewith an amended concise statement of each ground of rejection presented, in the form of a replacement Section 6 of the Appeal Brief filed herein 19 February 2008.

Applicant has done its best to comply with requirements set out in the Notification. However, and with all due respect, Applicant finds it impossible to understand the manner in which its Appeal Brief was non-compliant, or to understand the requirements stated by the Notification. Both the concise statement originally filed and the substitute concise statement filed herewith appear to Applicant to comply with 37 CFR 41.37(c)(1)(vi): each is concise; and each states each ground of rejection Applicant desires to have reviewed on appeal. Indeed, each was copied, essentially verbatim, from the Office Action Applicant is attempting to appeal. (Cf. Detailed Action attached to Office Action mailed 20 July 2007, at paragraphs 3, 4, and 5; pages 2, 16, and 17, respectively.)

In setting out the reasons for the issuance of the Notification, text associated with Box 10 thereof states simply that "c(6) The brief does not contain a precise statement of each ground of rejection presented for review. (claims 31, 51, 59-67 are canceled)." Applicant is not able to understand the Office's position.

While it is true that, as stated in the Notification, claims 31, 51, and 59-67 have been cancelled, it is equally true that each of those claims was purportedly rejected in the Office Action mailed herein 20 July 2007, long after they had been cancelled by Applicant; and Applicant seeks review of such rejection. See, for example, Applicant's statement at paragraph 3, page 27 of its Appeal Brief:

Some notion of the degree of care with which the Examiner has considered the various responses and amendments Applicant has entered in its sincere attempts to meet the Examiner's concerns and advance prosecution of the application may be gleaned from the fact that at paragraphs 4 and 5 the

Examiner has continued to reject Claims 63-66 in view of Eggleston and Bednarek, despite the cancellation of those claims in Applicant's response filed 22 September 2006 - three full rounds of examination prior to the rejections entered in the Office Action which is the subject of this Appeal.

Applicant respectfully submits that it is not possible, and represents an unfair burden on the Applicant, in the face of the inattentive and piecemeal rejections it is attempting to appeal, to require the Applicant to outguess the Office and provide a rational statement of the grounds for appeal in this case, in a form that the Office will accept: the cancelled claims were in fact rejected, despite the fact that they had already been cancelled, and Applicant in fact wishes that rejection (along with many others) to be reviewed.

Applicant respectfully submits that such inattentive and piecemeal examination is unprofessional, and reflects poorly on the Office. Moreover, it causes unjustified delays and expense for Applicant.


Applicant respectfully requests that the Appeal Brief, with or without the amended concise statement of each ground of rejection presented for review, be entered; and that the Appeal be considered. Applicant further requests issuance of the patent to which it is entitled under law.

In the event that the Office perceives any further deficiencies in this matter, Applicant requests an immediate telephone call to the undersigned attorney of record. Applicant is very earnestly striving, in good faith, to advance the prosecution and allowance of this Appeal, and the Application.

Applicant believes that no further fees are due in connection with this appeal. In the event that any such fee is determined by the Office to be due, or any overpayment has been made, Applicant requests that such deficiency or overpayment, including any fee for any Petition connected herewith, be charged to or credited to Deposit Account No. 50-2651.

Respectfully submitted,

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